

Alaska Public Defender Agency
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IN THE SUPREME COURT OF THE STATE OF ALASKA

RICHARD L. GREEN,

Petitioner,

v.

Supreme Court No. S-18202

STATE OF ALASKA, DEPARTMENT
OF HEALTH AND SOCIAL
SERVICES, OFFICE OF
CHILDREN'S SERVICES, AS LEGAL
CUSTODIAN OF UN-NAMED
CHILDREN 1-4 AND OFFICE OF
PUBLIC ADVOCACY, AS
GUARDIAN AD LITEM OF UN-
NAMED CHILDREN 1-4,

Respondents.

Trial Case No. 3PA-20-00568/569/570/571CI

NOTICE REGARDING DECISION ON PDA MOTION TO WITHDRAW

VRA AND APP. R. 513.5 CERTIFICATION

I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any offense unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court. I further certify, pursuant to App. R. 513.5, that the font used in this document is Arial 12.5 point.

The Public Defender Agency filed a motion to withdraw in the trial court.

On November 9, 2021, Judge Stohler issued an order denying the motion. A copy of the order is attached.

ALASKA PUBLIC DEFENDER AGENCY



DATE 11/15/21

LINDA R. BEECHER (8606041)
DEPUTY PUBLIC DEFENDER

I certify that on November 15th, a copy of this document and its attachments was emailed/faxed/mailed/hand-delivered to: Eric Ranchoff (OCS), Rachel Levitt (OPA), Katherine Demarest (OCS)

By: SB

Life FC 11/15/21 Rms

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT PALMER

STATE OF ALASKA, DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,
OFFICE OF CHILDREN'S SERVICES

o.b.o.

A G
S G
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Minor Petitioners,

v.

RICHARD L. GREEN,

Respondent.

Case No. 3PA-20-00568CI

Case No. 3PA-20-00569CI

Case No. 3PA-20-00570CI

Case No. 3PA-20-00571CI

ORDER DENYING MOTION TO WITHDRAW

On October 15, 2021, the Supreme Court of Alaska ordered this court to resolve the Alaska Public Defender Agency's (Agency) Motion to Withdraw and Memorandum in Support (Motion to Withdraw), which was subsequently filed on October 26, 2021.¹ The Agency argues that it has a conflict of interest that precludes the Agency's reappointment to Mr. Green in the above-captioned matters given Mr. Green's ineffective-assistance-of-counsel claim against the Agency, which is currently pending on appeal. For the reasons stated herein, the Agency's Motion to Withdraw is DENIED.

The Agency argues it has a conflict of interest representing Mr. Green pursuant to Alaska R. Pro. Conduct 1.7(a)(2).² The Agency cites to *Sherwood v. State* and *Nelson v. State* in support

¹ *Green v. State of Alaska et. al*, No. S-18202 (Alaska 2021) (order to stay appellate proceedings).

² There is a conflict of interest if "there is a significant risk that the representation . . . will be materially limited . . . by a personal interest of the lawyer." Alaska R. Pro. Conduct 1.7(a)(2).

of its motion. In *Sherwood v. State*, a criminal case, the Court found a conflict of interest where the Office of Public Advocacy assigned the contract attorney who represented Sherwood in his direct appeal to represent him on his petition for post-conviction-relief (PCR). Because representation in the PCR matter required the attorney to evaluate his own performance for an ineffective-assistance-of-counsel claim, the Court found “the attorney’s ability to conduct such a review was hampered by his own personal interest in defending his representation in the direct appeal.”³ And, in *Nelson v. State*, another criminal matter, the court found a public defender has a conflict of interest when an ineffective-assistance-of-counsel claim is raised against another public defender in the same office.⁴

Contrary to *Sherwood* and *Nelson*, in this case, the Agency does not represent Mr. Green on the ineffective-assistance-of-counsel claim currently on appeal. Although Ms. Beecher asserts that she provided consultation and supervision to Mr. Green’s prior Agency-appointed attorneys, she offers no facts supporting her contention that her representation of Mr. Green in the trial-court matter would require her to argue the representation provided by those attorneys was ineffective. The court reappointed the Agency to Mr. Green in the trial-court matters to evaluate potential grounds for relief per Rule 60(b) *other* than ineffective assistance of counsel.

Should the Agency determine there is a colorable 60(b) motion that, by its nature, raises a potential new basis for an ineffective-assistance-of-counsel claim, the Agency may renew its Motion to Withdraw at that time.

³ *Sherwood v. State*, 493 P.3d 230, 231-32 (Alaska App. 2021).

⁴ *Nelson v. State*, 440 P.3d 240, 245-46, 248 (Alaska 2019).

The Agency's Motion to Withdraw and Memorandum in Support is HEREBY DENIED.

DONE and ENTERED this 9th day of November 2021 at Palmer, Alaska.

Kristen C. Stohler
Kristen C. Stohler
Superior Court Judge

I certify that on 11/9/21
a copy of this document was sent to
☐ CSSD ☒ Attorney(s) of record
☐ Plaintiff ☐ Defendant ☐ Other
At the address(es) of record:
Rec'd Jnl RL
Deputy Clerk